Rimba Muda Timber Trading v Lim Kuoh Wee

FEDERAL COURT (PUTRAJAYA) — CIVIL APPEAL NO 02–13 OF 2005(C)
ABDUL HAMID MOHAMAD, ARIFIN ZAKARIA AND AUGUSTINE PAUL FCJJ
2 JUNE 2006

Tort — Conversion — Passing of property — Illegal contract — Sub-contract was fully executed — Whether property rights could pass under a contract even though the contract was tainted with illegality — Whether good faith was defence to claim in conversion by true owner

A timber concession was given by the State Government of Pahang to one Mohamad Aminallah to fell and extract timber from a concession area. By an agreement dated 6 May 1994, he appointed Chan Kwek Meng ('the first defendant') as the principal contractor to fell and extract timber from the concession area. Under the agreement, Chan was entitled to sell the felled timber. Chan in turn appointed Lim Kuoh Wee ('the respondent') to fell and extract the timber under an agreement dated 28 January 1995, between him and the respondent. About a year later, the respondent discovered that Chan had extracted the timber from the concession area and sold them to the appellant. The respondent then filed this action against both Chan and the appellant for trespass and conversion. The suit against Chan was settled out of court.

The respondent's claim against the appellant was dismissed by the High Court and the respondent successfully appealed against the decision to the Court of Appeal, which allowed the respondent's claim for conversion and directed that the damages be assessed by the Senior Assistant Registrar of the High Court. The appellant appealed to the Federal Court contending that the property in the logged timber could not in law pass to the respondent on the ground that the contract between Chan and the licence holder was illegal being in breach of the provisions of the National Forestry Act 1984. Based on the uncontroverted evidence before the court, the respondent had paid the full sum of RM140,000 to Chan.

Held, dismissing the appeal:

(1) The fact that the contract was illegal would not prevent the property in the logged timber passing to the respondent who had fully paid for the timber (see para 13). In the circumstances, this court therefore agreed with the Court of Appeal that even if the contract was illegal, that did not prevent the property right in the logs from being vested in the respondent. The claim by the respondent could not be defeated purely on the ground that the relevant contract was illegal as the respondent did not ground his claim on the illegal contract. The respondent here merely relied on the contract as a basis for his claim to the property right in the logs (see para 14).

(2) Since the respondent had fully discharged his part of the bargain there was nothing more for him to do. In the circumstances, once the licence to extract timber was issued to the licence holder, then the right to the timber immediately vested in the respondent. The mere fact that the respondent did not enter or work the concession area did not affect his right to the timber under the contract (see para 15).

(3) The sub-contract was fully executed once the respondent paid the full sum of RM140,000 to Chan and the property right in the logs immediately passed to the respondent upon the issuance of the licence to extract the timber to the licence holder. In law, it was not necessary for the respondent to take possession of the logs before the property right in the logs could pass to him (see para 17). In the circumstances, this court agreed with the Court of Appeal that the property in the logs had, at the material time, passed to the respondent (see para 18).

(4) Therefore, whether the defendant acted with complete innocence or in good faith would not afford a defence to a claim in conversion by the true owner of the goods or chattel. The common law has always leaned in favour of the true owner (see para 24).

(5) In an action founded on the tort of conversion, property rights could pass under a contract even though the contract is tainted with illegality, provided that the action is not grounded on the illegal contract (see para 29).

[Bahasa Malaysia summary

Satu konsesi kayu balak telah diberikan oleh Kerajaan Negeri Pahang kepada Mohamad Aminallah untuk menumbang dan mengambil kayu balak daripada kawasan konsesi. Melalui satu perjanjian bertarikh 6 Mei 1994, beliau telah melantik Chan Kwek Meng ('defendan pertama') sebagai kontraktor utama untuk menumbang dan mengambil kayu balak daripada kawasan konsesi itu. Di bawah perjanjian itu, Chan berhak untuk menjual kayu balak yang ditumbangkan. Chan kemudian telah melantik Lim Kuoh Wee ('responden') untuk menumbang dan mengambil kayu balak di bawah satu perjanjian bertarikh 28 Januari 1995, antara beliau dan responden. Setahun kemudian, responden mendapati bahawa Chan telah mengambil kayu balak daripada kawasan konsesi dan menjualnya kepada perayu. Responden kemudian telah memfailkan tindakan ini terhadap kedua-dua Chan dan perayu kerana menceroboh dan penukaran. Guaman terhadap Chan telah diselesaikan di luar mahkamah.

Tuntutan responden terhadap perayu telah ditolak oleh Mahkamah Tinggi dan responden berjaya merayu terhadap keputusan Mahkamah Rayuan, yang membenarkan tuntutan responden untuk penukaran dan mengarahkan agar ganti rugi ditaksirkan oleh Penolong Kanan Pendaftar Mahkamah Tinggi. Perayu telah merayu ke Mahkamah Persekutuan dengan menegaskan bahawa hartanah dalam kayu balak yang ditumbangkan tidak boleh dari segi undang-undang dipindahkan

kepada responden atas alasan bahawa kontrak antara Chan dan pemegang lesen adalah menyalahi undang-undang kerana telah melanggar peruntukan Akta Perhutanan Negara 1984. Berdasarkan keterangan yang tidak dipertikaikan di hadapan mahkamah, responden telah membayar keseluruhan jumlah RM140,000 kepada Chan.

Diputuskan, menolak rayuan tersebut:

(1) Fakta bahawa kontrak itu menyalahi undang-undang tidak menghalang hartanah dalam kayu balak yang ditumbangkan itu dipindahkan kepada responden yang telah membuat bayaran penuh untuk kayu balak tersebut (lihat perenggan 13). Dalam keadaan sedemikian, mahkamah ini bersetuju dengan Mahkamah Rayuan bahawa meskipun kontrak itu menyalahi undang-undang, ia tidak menghalang hak hartanah dalam kayu balak itu terletak hak kepada responden. Tuntutan oleh responden tidak boleh digagalkan semata-mata atas alasan bahawa kontrak berkaitan adalah menyalahi undang-undang kerana responden tidak menjadikan asas tuntutan beliau atas kontrak yang menyalahi undang-undang. Responden di sini hanya bergantung kepada kontrak sebagai asas tuntutan beliau terhadap hak hartanah dalam kayu balak itu (lihat perenggan 14).

(2) Memandangkan responden telah melepaskan sepenuhnya bahagian tawaran beliau tidak ada apa-apa lagi untuk beliau lakukan. Dalam keadaan sedemikian, jika lesen untuk menumbangkan kayu balak telah dikeluarkan kepada pemegang lesen, maka hak terhadap kayu balak dengan serta merta terletak hak kepada responden. Fakta semata-mata bahawa responden tidak memasuki atau bekerja dalam kawasan konsesi tidak menjejaskan hak beliau terhadap kayu balak di bawah kontrak tersebut (lihat perenggan 15).

(3) Sub-kontrak itu telah disempurnakan sepenuhnya apabila responden membayar keseluruhan jumlah RM140,000 kepada Chan dan hak hartanah terhadap kayu balak itu serta merta berpindah kepada responden dengan pengeluaran lesen untuk mengambil kayu balak itu kepada pemegang lesen. Dari segi undang-undang, tidaklah perlu untuk responden mengambil perolehan kayu balak sebelum hak hartanah terhadap kayu balak itu berpindah kepadanya (lihat perenggan 17). Dalam keadaan sedemikian, mahkamah ini bersetuju dengan Mahkamah Rayuan bahawa hartanah terhadap kayu balak itu telah, pada setiap masa matan, berpindah kepada responden (lihat perenggan 18).

(4) Oleh itu, sama ada defendan bertindak dengan suci hati atau dengan niat yang baik tidak memberikan satu pembelaan satu tuntutan untuk penukaran oleh pemilik sebenar barangan atau catel. Common law sering berpihak kepada pemilik sebenar (lihat perenggan 24).

(5) Dalam satu tindakan yang berdasarkan tort penukaran, hak hartanah akan berpindah di bawah kontrak meskipun kontrak itu dicemari kerana menyalahi undang-undang, dengan syarat agar tindakan tidak berdasarkan kontrak yang menyalahi undang-undang (lihat perenggan 29).]

Notes

For cases on conversion generally, see 12 *Mallal's Digest* (4th Ed, 2002 Reissue) paras 81–133.

Cases referred to

Belvoir Finance Co Ltd v Stapleton [1971] 1 QBD 210 (refd)
Hollins v Fowler (1875) LR 7 HL 757 (refd)
Lo Su Tsoon Timber Depot v Southern Estate Sdn Bhd [1971] 2 MLJ 161 (refd)
Marfani & Co Ltd v Midland Bank Ltd [1968] 1 WLR 956 (refd)
RH Willis & Son v British Car Auctions Ltd [1978] 1 WLR 438 (refd)
Sajan Singh v Sardara Ali [1960] MLJ 52 (refd)
Sundang Timber Co Sdn Bhd v Kinabatangan Co Sdn Bhd [1977] 2 MLJ 200 (refd)
Tinsley v Milligan [1994] 1 AC 340 (refd)

Legislation referred to

Forest Enactment 1968 s 24(6)
National Forestry Act 1984

Appeal from: Civil Appeal No C–02–246 of 1999 (Court of Appeal, Putrajaya)

Arifin Zakaria FCJ (delivering judgment of the court):

THE BACKGROUND

[1] This is an appeal pursuant to leave of this court on the single question which reads: 'When an action is based on and founded on the tort of conversion, does property pass to a party under a sub-contract agreement, as regards ownership of such property?'. Before we proceed to consider the question posed to us, it is necessary to briefly state the facts pertinent to this appeal.

BRIEF FACTS

[2] A timber concession was given by the State Government of Pahang to one Mohamad Aminallah to fell and extract timber from a concession area. By an agreement dated 6 May 1994, he appointed Chan Kwek Meng (the first defendant in the High Court) as the principal contractor to fell and extract timber from the concession area. Under the agreement, Chan is entitled to sell the felled timber. Chan in turn appointed Lim Kuoh Wee, the respondent herein, to fell and extract the timber under an agreement dated 28 January 1995, between him and the respondent. About a year later, the respondent discovered that Chan had extracted the timber from the concession area and sold them to the appellant. The respondent then went to Chan's stockpile area and there he found that the disputed logs were being loaded onto lorries belonging to the appellant. The respondent protested against it, but to no avail. The appellant continued to cart away the logs.

ACTION FOR TRESPASS AND CONVERSION

[3] The respondent then filed this action against both Chan and the appellant for trespass and conversion. The suit against Chan was settled out of court. The respondent's claim against the appellant was dismissed by the High Court and the respondent successfully appealed against the said decision to the Court of Appeal, which allowed the respondent's claim for conversion and directed that the damages be assessed by the Senior Assistant Registrar of the High Court.

THE APPEAL BEFORE US

[4] Before us, the appellant contends that the Court of Appeal erred in fact and in law:

(i) In holding that property right in the logs could pass under an illegal and an unenforceable contract;

(ii) In holding that property right in the logs had passed to the respondent under the sub-contract between the respondent and Chan;

(iii) In failing to consider that the agreement was not fully performed and still at executory stage;

(vi) In failing to consider the fact that the respondent as a sub-contractor had not at any time entered or worked the concession area;

(v) In holding that mistake or inadvertence is no defence to an action in conversion; and

(vi) In holding that the act of the appellant in removing and selling the timber constituted an act of conversion whereas the appellant was a purchaser in good faith from Chan, the contractor of the licence holder.

Ground (i) — The illegality point

[5] From our reading of the grounds of judgment of the Court of Appeal, it appears that this issue was raised by the appellant for the first time in the Court of Appeal and for that reason the Court allowed time for the respondent' s counsel to answer the point. Having considered the matter the Court of Appeal, relying on *Tinsley v Milligan* [1994] 1 AC 340 and *Sajan Singh v Sardara Ali* [1960] MLJ 52, held that, even assuming the relevant contracts are tainted with illegality, the defence failed because it is axiomatic that property in a chattel may pass under an illegal contract.

[6] Before us, it was contended for the appellant that the property in the logged timber could not in law pass to the respondent on the ground that the contract between Chan and the licence holder is illegal being in breach of the provisions of the National Forestry Act 1984. And for the same reason, the sub-contract between the respondent and Chan is illegal and of no effect and is not capable of passing the property right in the logged timber to the respondent. In support, the appellant cited a number of authorities. We will now turn to consider the authorities cited to us. Firstly, *Sundang Timber Co Sdn Bhd v Kinabatangan Co Sdn Bhd* [1977] 2 MLJ 200.

There, the appellants had been granted a special licence by the State Government of Sabah to extract timber. They in turn entered into an irrevocable agency agreement with the respondents for a period of 10 years to operate and manage the appellants' business. The appellants claimed against the respondents for the alleged final statement of account. The respondents in their defence raised the issue of illegality. The trial judge ruled that the power of attorney was in breach of the Forest Enactment 1968 and was therefore illegal and any claim based on it was unenforceable. On appeal, the Federal Court held that the agreement was clearly illegal being in breach of s 24(6) of the Forest Enactment 1968. Consequently, any claim based thereon cannot succeed as it would be tainted with illegality. In arriving at their decision the Federal Court considered the case of *Lo Su Tsoon Timber Depot v Southern Estate Sdn Bhd* [1971] 2 MLJ 161 and at p 203 stated:

> *Tan Bing Hock v Abu Samah* and a later case between the same parties and *Leong Poh Chin v Chin Thin Sin* cited by the parties were dealt with in sufficient detail in *Lo Su Tsoon*'s case. All I need say is that respondents in the present case are placed in the same situation as defendants in Tan Bing Hock's case in that like defendants in that case respondents did not seek to enforce the illegal contract but were dragged into court and were entitled to set up the defence of illegality.

[7] In *Lo Su Tsoon*, Ismail Khan CJ (Borneo) in allowing the appeal stated at p 163:

> The point whether the court can take cognizance of a point of illegality, whether pleaded or not, has been the subject of numerous decisions. I need only refer to the case of *Snell v Unity Finance Limited* where most of the authorities were dealt with. In that case Willmer LJ referred with approval to the propositions set out by Devlin J. in *Edler v Auerbach* who, following the reference to *North-Western Salt Company Limited v Electrolytic Alkali Company Limited*, said:
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> > That case authorises, I think, four propositions: first, that where a contract is ex facie illegal, the court will not enforce it, whether the illegality is pleaded or not; secondly, that where, as here, the contract is not ex facie illegal, evidence of extraneous circumstances tending to show that it has an illegal object should not be admitted unless the circumstances relied on are pleaded; thirdly, that where unpleaded facts, which, taken by themselves show an illegal object, have got in evidence (because, perhaps, no objection was raised or because they were adduced for some other purpose), the court should not act on them unless it is satisfied that the whole of the relevant circumstances are before it; but, fourthly, that where the court is satisfied that all the relevant facts are before it and it can see clearly from them that the contract had an illegal object, it may not enforce the contract, whether the facts were pleaded or not.
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> The instant case comes, if not within the first, at least within the ambit of the fourth proposition.

[8] What is amply clear in the above mentioned cases is that where the illegal contract was relied upon by a party in grounding his claim against the other then the action will not succeed. The respondent's counsel submits that this is not the case here. In the present case, he said, the respondent is not seeking to enforce the sub-contract between him and Chan which was said to be tainted with illegality but his claim is founded on the collateral rights acquired under the contract. In other words the illegality does not form part of the respondent's case.

[9] As stated by Lord Browne-Wilkinson in *Tinsley v Milligan* at p 370:

> From these authorities the following propositions emerge: (1) property in chattels and land can pass under a contract which is illegal and therefore would have been unenforceable as a contract; (2) a plaintiff can at law enforce property rights so acquired provided that he does not need to rely on the illegal contract for purpose other than providing the basis of his claim to a property right; (3) it is irrelevant that the illegality of the underlying agreement was either pleaded or emerged in evidence: if the plaintiff has acquired legal title under the illegal contract that is enough.

[10] The above passage was quoted by the Court of Appeal in support of their finding.

[11] In *Sajan Singh v Sardara Ali*, the legality of the contract between the parties was in issue. There, the plaintiff Sardara Ali entered into an agreement with the defendant Sajan Singh whereby the defendant was to acquire a lorry (the subject matter of the proceedings) and register it in his own name and obtain a haulage permit for the lorry, but it was intended that the lorry should be purchased by the plaintiff and used by him on his own account. This transaction was in contravention of certain regulations governing the transfer and use of motor vehicles. For some time the plaintiff used the lorry as his own, but operated it in the name of the defendant. Subsequently they fell out and the defendant removed the lorry from the plaintiff's possession without his permission. The plaintiff then brought an action for declaration that he was the owner of the lorry, coupled with a claim in detinue. The learned trial judge was satisfied as to the truth of the plaintiff's claim but took notice of the illegality and gave judgment for the defendant. He held that as both the plaintiff and defendant had practiced deceit on the public administration of the country, it was the duty of the Court to refuse the plaintiff aid. The Court of Appeal reversed this decision and held that the plaintiff could recover damages for trespass as he did not seek to found his claim on the illegal transaction. The defendant appealed.

[12] Dismissing the appeal, the Privy Council held, inter alia, that although the transaction between the plaintiff and the defendant was illegal, nevertheless it was fully executed and carried out and on that account it was effective to pass the property in the lorry to the plaintiff.

[13] Similarly here we are of the view that the fact that the contract was illegal would not prevent the property in the logged timber passing to the respondent who had fully paid for the timber.

[14] In the circumstances, we therefore agree with the Court of Appeal that even if the contract is illegal that does not prevent the property right in the logs from being vested in the respondent. The claim by the respondent could not be defeated purely on the ground that the relevant contract was illegal as the respondent did not ground his claim on the illegal contract. The respondent here merely relied on the contract as a basis for his claim to the property right in the logs.

Grounds (ii), (iii) and (iv) — Whether in the circumstances of this case, property right in the logs timber had passed to the respondent

[15] The next issue raised by the appellant is whether in the circumstances of this case, property right in the logs had, at the material time, passed to the respondent. Based on the uncontroverted evidence before the court, the respondent had paid the full sum of RM140,000 to Chan. This is contained in the evidence of the respondent and confirmed by the consent judgment of 28 July 1998 entered against Chan. Since the respondent had fully discharged his part of the bargain there is nothing more for him to do. In the circumstances, we agree with the learned counsel for the respondent that once the licence to extract timber was issued to the licence holder, then the right to the timber immediately vests in the respondent. The mere fact that the respondent did not enter or work the concession area does not affect his right to the timber under the contract.

[16] There is one other point. Counsel for the respondent contends that the proprietary right in the logs could not vest in the respondent as the respondent did not have possession of the logs at the material time. We find no support for his contention. See *Belvoir Finance Co Ltd v Stapleton* [1971] 1 QBD 210, where at p 217, Lord Denning MR observed:

> I think that the proposition stated in *Sajan Singh v Sardara Ali* [1960] AC 167 , 176, applies even where the transferee has not taken possession of the property, so long as the title to it has passed. If this were not so, it would mean that anyone could take the property with impunity: because there would be no one who could show a title to it. Take this very case. The dealers, who sold the car to the finance company, cannot claim it back from anyone. They have received their price and are out of the picture. Belgravia, who re-sold the car illegally to the purchaser, cannot claim it from him or anyone else: for they have received the price too. The only persons who can claim it are the finance company who paid for it and have not been re-paid. Although they obtained the car under a contract which was illegal, nevertheless inasmuch as the contract was executed and the property passed, the car belonged to the finance company and they can claim it. This was the view of Winn LJ in *Kingsley v. Sterling Industrial Securities Ltd.* [1967] 2 QB 747, 783, and I agree with it. *Bowmakers* [1945] KB 65 was rightly decided, even though this point was not argued.

[17] In the present case, we are of the view that the sub-contract was fully executed once the respondent paid the full sum of RM140,000 to Chan and the property right in the logs immediately passed to the respondent upon the issuance of the licence to extract the timber to the licence holder. In law it is not necessary for the respondent to take possession of the logs before the property right in the logs could pass to him.

[18] In the circumstances, we agree with the Court of Appeal that the property in the logs had, at the material time, passed to the respondent. For those reasons, we find no merit in grounds (ii), (iii) and (iv).

Grounds (v) and (vi) — Defence of mistake or inadvertence

[19] The answer to the issues raised herein may be found in the judgment of the Court of Appeal which reads:

A ..., it is settled law that mistake or inadvertence is no defence to an action in conversion. Once again I quote from Clerk & Lindsell 18th edition at page 153, para 3–122:

> Mistake may lead the defendant into liability which he did not, and sometimes could not, reasonably anticipate. However, mistake of law will not excuse, nor, speaking generally, will mistake of fact. So, to deal with the goods of one person under the honest and even
B reasonable mistake that they belong to someone else is a conversion.

[20] The editors of *Clerk & Lindsell* cite *Hollins v Fowler* (1875) LR 7 HL 757 as authority for the last proposition. In that case, Blackburn J said:

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> However hard it may be on those who deal innocently and in the ordinary course of business with a person in possession of goods, yet, as long as the law as laid down in *Hardman v Booth, 1 H. & C.803*, is unimpeached, I think it is clear law, that if there has been what amounts in law to a conversion of the plaintiff's goods, by any one, however innocent, that person must pay the value of the goods to the real owners, the plaintiffs.

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> The act of the defendant in removing and selling the timber constitutes an act of conversion. Of that there can be no doubt.

[21] *Winfield and Jolowicz on Tort* (16th Ed) at p 612 summed up the legal position in the following words:

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> The first thing to be said about mistake is that it does not usually provide a defence, for liability in conversion is strict.

[22] For support, the learned authors cited *Marfani & Co Ltd v Midland Bank Ltd* F [1968] 1 WLR 956. In that case, Diplockn LJ at p 970 stated the position at common law as follows:

> At common law, one's duty to one's neighbour who is the owner, or entitled to possession, of any goods is to refrain from doing any voluntary act in relation to his goods which is a usurpation of his proprietary or possessory rights in them. Subject to some exceptions which
G are irrelevant for the purposes of the present case, it matters not that the doer of the act of usurpation did not know, and could not by the exercise of any reasonable care have known, of his neighbour's interest in the goods. The duty is absolute; he acts at his peril.

[23] In *RH Willis & Son v British Car Auctions Ltd* [1978] 1 WLR 438, a case H involving the plaintiffs, a car dealer, who also provides hire purchase facilities, and the defendant, a car auctioneer. On the claim by the plaintiffs against the defendant, it was held that the defendant was liable to the plaintiffs in relation to the car sold at the auction by the defendant despite the fact that the defendant was unaware that the car in question was on a hire purchase provided by the plaintiffs. Lord Denning
I MR in affirming the decision of the court below candidly explained the legal position as follows:

> The question that arises is the usual one: which of the two innocent persons is to suffer? Is the loss to fall on the owners? They have been deprived of the £275 due to them on the car. Or on the auctioneers? They sold it believing that Mr Croucher was the true owner.

> In answering that question in cases such as this, the common law has always acted on the maxim *nemo dat quod non hebat.* It has protected the property rights of the true owner. It has enforced them strictly as against anyone who deals with goods inconsistently with the dominion of the true owner. Even though the true owner may have been very negligent and the defendant may have acted in complete innocence, nevertheless the common law held him liable in conversion.

[24] Therefore, the position is plain, whether the defendant acted with complete innocence or in good faith would not afford a defence to a claim in conversion by the true owner of the goods or chattel. The common law has always leaned in favour of the true owner.

[25] That, we think disposes of grounds (v) and (vi).

ERRORS IN THE JUDGMENT OF THE COURT OF APPEAL

[26] In the course of arguments, learned counsel for the appellant referred us to some statement of facts made by the Court of Appeal which he contends are contrary to the evidence before the court. These are found at p 2 of the judgment which reads:

> Later, Aminallah entered into another agreement with the defendant permitting him also to harvest timber from the concession. It is the plaintiff's case-indeed it is common ground that the defendant, having entered into possession of the area of concession, interfered with the logs that belong to the plaintiff.

[27] The learned counsel contends that the above observation is erroneous on two counts: firstly, the appellant did not at any time enter into any agreement with the Aminallah, the licence holder. Secondly, the appellant did not at any time enter into possession of the concession area. On the evidence adduced, he said, it was Chan who entered the concession area and logged the area. The appellant merely purchased the logs from Chan.

[28] We have perused the record and we entirely agree with the learned counsel that the Court of Appeal had, to the extent indicated, misstated the facts of this case. However, we are of the view, that it has no bearing on the final outcome of this case. This is because the critical question to be answered in this case is whether there is sufficient evidence before the court to support a finding that the appellant had interfered in the property or possessory rights of the respondent over the logs. The Court of Appeal answered the question in the affirmative. We find no discernible error on the part of the Court of Appeal in arriving at its decision. It is fully supported by the evidence on record.

CONCLUSION

[29] For the reasons given in this judgment, we would answer the question posed to us in the following manner: In an action founded on the tort of conversion, property rights could pass under a contract even though the contract is tainted with illegality, provided that the action is not grounded on the illegal contract.

[30] In the result, the appeal herein is dismissed with costs and the deposit to be paid out to the respondent to the account of his taxed costs.

Appeal dismissed.

Reported by Loo Lai Mee